

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Qwest Corporation for)	File No. WC 02-77
)	
Declaratory Ruling Clarifying that the)	
Wholesale DSL Services Qwest Provides to)	
MSN Are Not "Retail" Services Subject)	
to Resale Under Section 251(c)(4) of the)	
Act)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of its independent incumbent local exchange and competitive local exchange/long distance operations, respectfully submits its reply to comments filed in the above-captioned proceeding on May 15, 2002.

The Commission initiated this proceeding to receive comments on Qwest's April 3, 2002 Petition requesting a declaratory ruling that, contrary to the claims of the Minnesota Department of Commerce (DOC), Commission Rule 51.605(c)¹ applies to Qwest's sale of DSL services to Microsoft Network, L.L.C. (MSN) notwithstanding Qwest's provision of billing, collection, and marketing services for MSN. Rule 51.605(c) provides that advanced telecommunications services, including DSL services, sold to Internet Service Providers ("ISPs") as an input component to the ISPs' retail Internet service are not telecommunications services offered at retail and, accordingly, are not subject to the incumbent LEC obligation to make such services available for resale at wholesale rates under Section 251(c)(4) of the Act.²

¹ 47 C.F.R. § 51.605(c).

² 47 U.S.C. § 251(c)(4).

In its Comments, Sprint supported Qwest's request and argued that Rule 51.605(c) applies to Qwest's bulk DSL services, notwithstanding the fact that Qwest provides billing, collection, and sales agency services to the ISP. Not only does the *AOL Bulk Services Order*³ support this conclusion, but also, as Sprint demonstrated in its comments, substantial historical precedent establishes that the provision of the billing, collection and sales services by one entity on behalf of the other, does not alter the fact that the latter entity is the retail provider of the service to the end user. Other parties' comments do not refute Sprint's arguments; however, they do raise several points that warrant reply.

AT&T argues that the *AOL Bulk Services Order* establishes a limited exception to the incumbent's resale obligations that only applies where the incumbent is NOT providing ANY typical retail functions:

In 1999, the Commission established a limited exception to the resale obligations for an ILEC's bulk sales of DSL transport to an ISP, but that rule was explicitly premised upon a requirement that the ISP "must itself, rather than the incumbent" provide any "typical retail functions."⁴

AT&T's narrow construction misconstrues what the Commission ordered in the *AOL Bulk Services Order*. Rather than premise the exception on the condition that the incumbent cannot provide ANY typical retail functions for the ISP, the Commission simply stated:

Further, the DSL services that incumbents are offering to Internet Service Providers specifically contemplate that the Internet Service Provider will be the entity providing to the ultimate end-user **many** services typically

³ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, CC Docket No. 98-147, FCC 99-33-, released November 9, 1999 ("*AOL Bulk Services Order*").

⁴ Opposition of AT&T Corp. To Qwest Corporation's Petition for Declaratory Ruling, at p. 2. *See also*, WorldCom Comments at pp. 1-2, and Opposition of the Association of Communications Enterprises at pp. 4-6.

associated with retail sales, thus **reinforcing** our conclusion that the bulk DSL services are not retail services offered to the ultimate end-users.⁵

Thus, contrary to AT&T's argument, that the ISP provides all retail functions was clearly not a requirement in the *AOL Bulk Services Order*, nor is such a requirement embodied in the text of Rule 51.605(c). Rather, the determinative point in the Order and the Rule is that the DSL is merely a component or input to the ISP that the ISP combines with Internet access to offer a combined service to the ultimate end-user -- the same arrangement that Qwest appears to have with MSN.

Several commenters argue that the Commission should broaden this proceeding. WorldCom⁶ and AT&T⁷ suggest that the Commission further investigate the MSN - Qwest relationship to determine whether there are other factors in that relationship, in addition to the billing, collection, and sales services, that would warrant a finding of a Section 271 violation similar to that found in *Qwest Teaming Order*⁸. The Minnesota Department of Commerce urges the Commission to do likewise⁹.

These commenters may have valid concerns; however, they are not germane to the narrow issue presented in Qwest's Petition, nor in the Commission's Public Notice¹⁰ seeking comments on same. If the Commission deems it appropriate to further investigate these allegations and concerns, it should open a separate proceeding to do so. However, consistent with prior precedent, the Commission should conclude this proceeding with a narrow holding that Rule 51.605(c) applies to bulk sales of DSL

⁵ *AOL Bulk Services Order* at para. 15. Emphasis supplied.

⁶ WorldCom Comments at pp. 2-4.

⁷ Opposition of AT&T Corp. to Qwest Corporation's Petition for Declaratory Ruling at pp. 16-17.

⁸ AT&T Corporation et al. V. Ameritech Corporation, Memorandum Opinion and Order, 13 FCC Rcd 21438 (1998) ("*Qwest Teaming Order*").

⁹ Comments of the Minnesota Department of Commerce, at pp. 7-8.

¹⁰ Public Notice, April 15, 2002 (DA 02-879).

services by an incumbent LEC to an ISP, notwithstanding that the incumbent may, on behalf of the ISP, provide billing, collection, and sales services.

Respectfully submitted,

SPRINT CORPORATION

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May 15, 2002

CERTIFICATE OF SERVICE

I, Joyce Y. Walker, hereby certify that I have on this 30th day of May 2002, served via hand delivery and U.S. mail, a copy of the foregoing letter, "In the Matter of Petition of Qwest Corporation for Declaratory Ruling, File No. WC 02-77", filed this date with the Secretary, Federal Communications Commission, to the persons listed below.

/s/

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